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8 UNITED STATES DISTRICT COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON  
10

11 SKYCORP LTD,  
12

13 Plaintiff,

14 vs.

15 KING COUNTY, a municipal subdivision  
16 of State of Washington,

17 Defendant.

Case No.:

**COMPLAINT**

18 Comes now, Richard M. Stephens and Stephens & Klinge LLP, Attorneys at  
19 Law, on behalf of Plaintiff SkyCorp Ltd. hereinafter “Plaintiff” or “SkyCorp” and  
20 alleges as follows:  
21

22 **INTRODUCTION**

23 1. King County asserts that it can control and prohibit the disposal of  
24 construction and demolition debris beyond King County’s jurisdictional borders.  
25 Yet, King County has no authority to regulate activities in other counties or  
26 other states. Its decision to do so violates the interstate commerce clause and  
27

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STEPHENS & KLINGE LLP  
601 – 108<sup>TH</sup> Avenue NE, Suite 1900  
Bellevue, WA 98004  
425-453-6206

1 due process clause of the federal constitution, the state constitutional limits on  
2 local governmental authority to regulate within their local jurisdiction and the  
3 privileges and immunities clause of the Washington constitution. SkyCorp seeks  
4 declaratory and injunctive relief that King County cannot exercise its regulatory  
5 power beyond its territorial limits.  
6

### 7 **JURISDICTION AND VENUE**

8  
9 2. This action arises under the dormant Commerce Clause of Article I,  
10 Section 8, clause 3 of the United States Constitution and 42 U.S.C. § 1983 in  
11 relation to Defendant's deprivation of Plaintiff's constitutional rights.  
12 Accordingly, this Court has federal question jurisdiction pursuant to 28 U.S.C.  
13 §§ 1331 and 1343. This Court has supplemental jurisdiction over the claims  
14 asserting violations of the Washington Constitution pursuant to 28 U.S.C. §  
15 1367(a). This Court has authority to award the requested declaratory relief  
16 pursuant to 28 U.S.C. § 2201; the requested injunctive relief pursuant to 28  
17 U.S.C. § 1343(a); and attorney's fees.  
18

19  
20 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and  
21 (2), because Defendant King County is located within this district and a  
22 substantial part of the events giving rise to Plaintiff's claims occurred in this  
23 district.  
24  
25  
26  
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28

**PARTIES**

4. Plaintiff SkyCorp at all relevant times, is and was a Washington corporation organized and authorized to do business and doing business in the State of Washington.

5. Defendant King County is a municipal subdivision of the State of Washington.

**STANDING**

6. Plaintiff challenges King County Code Sections 10.08.020 and 10.30.020 in this action. On July 24, 2020, Plaintiff was cited with violating these code sections and assessed a fine. The citation was affirmed by the King County Hearing Examiner on September 18, 2020.

7. Plaintiff has standing to bring its claims since it is aggrieved by the enforcement of this ordinance in the issuance of this citation and imposition of the fine.

**FACTUAL ALLEGATIONS**

8. SkyCorp is in the business of demolishing buildings and removing construction and demolition debris. As part of its business, it has entered into contracts to demolish and remove debris from locations within King County.

9. King County Code Section 10.08.020 establishes a system of disposal of all solid waste either generated, collected or disposed in unincorporated King County or generated or collected, or both, in any other jurisdictions with which a

1 solid waste interlocal agreement exists. King County Code Section 10.08.030A  
2 provides:

3 All generators, handlers and collectors of mixed and nonrecyclable C&D  
4 waste generated within the county's jurisdiction shall deliver, or ensure  
5 delivery to, a designated C&D receiving facility specified by the division  
6 director, except as permitted by subsections C. and E. of this section.

7 C &D waste is construction and demolition debris.

8 10. SkyCorp is informed and believes that King County has approved only  
9 four private landfills for depositing construction and demolition debris.  
10

11 11. SkyCorp is informed and believes that because of King County's approval  
12 of these sites for depositing construction and demolition debris, King County  
13 receives a financial kickback from the owners or operators of these sites based on  
14 the tonnage of debris deposited that originated from within the territorial limits  
15 of King County.  
16

17 12. SkyCorp has taken construction and demolition debris from sites within  
18 the territorial limits of King County to deposit sites that are not approved by  
19 King County pursuant to KCC Section 10.08.030A.  
20

21 13. On July 24, 2020, SkyCorp received a citation from King County Division  
22 of Solid Waste for violation of KCC Section 10.08.030 because SkyCorp took  
23 construction and demolition waste from a site within the territorial borders of  
24 King County to a site in Naches, Washington, which is fully licensed by the State  
25 Department of Ecology and Yakima County.  
26  
27

1 14. On other occasions, SkyCorp has taken construction and demolition waste  
2 from sites within the territorial borders of King County to sites in Oregon that  
3 are fully licensed or permitted under Oregon law. Because of the increased cost  
4 in depositing construction and demolition waste at the sites approved by King  
5 County, it is less financially burdensome for SkyCorp to transport and deposit  
6 construction and demolition waste in Oregon or any other location in  
7 Washington.  
8

9  
10 15. On September 18, 2020, the King County Hearing Examiner affirmed the  
11 citation of SkyCorp imposing a \$100 fine in the order attached hereto as  
12 Appendix A.  
13

14 **FIRST CLAIM FOR RELIEF**

15 **Violation of the dormant Commerce Clause of the United States Constitution**

16 16. Plaintiff incorporates herein by reference each and every allegation  
17 contained in the preceding paragraphs of this Complaint as though fully set  
18 forth herein.  
19

20 17. The Commerce Clause, Art. I, § 8, clause 3 of the United States  
21 Constitution, provides: “The Congress shall have Power . . . To regulate  
22 Commerce with foreign Nations, and among the several States, and with the  
23 Indian Tribes.”  
24

25 18. The grant of power to Congress in the Commerce Clause implies that  
26 states cannot burden the flow of articles of interstate commerce, which is  
27 sometimes referred to as the negative or dormant Commerce Clause.  
28

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1 19. The negative or dormant Commerce Clause does not only restrict states,  
2 but also applies to cities and counties, such as Defendant King County.

3 20. In applying the King County Code to Plaintiff, the County has acted  
4 under color of statute, ordinance, regulation and policy of the county. The  
5 County's conduct has deprived Plaintiffs of the rights, privileges, and  
6 immunities secured by the United States Constitution and/or laws of the United  
7 States to which Plaintiff is and was legitimately entitled.  
8

9 21. Plaintiff has no adequate remedy at law to prevent or redress the  
10 irreparable injuries alleged herein.  
11

12 22. Unless King County is enjoined and restrained from enforcing or  
13 threatening to enforce King County Code Sections 10.08.020 and 10.30.020.  
14 Plaintiff will be irreparably injured. Plaintiff will be deprived of rights  
15 guaranteed under the United States Constitution, and will continue to suffer  
16 substantial loss.  
17

18 23. King County is a person for purposes of 42 U.S.C. § 1983.  
19

20 24. King County's actions challenged herein were undertaken under color of  
21 state law.

22 25. The County's conduct has required Plaintiff to incur attorneys' fees and  
23 costs of suit to bring this action, and Plaintiff is entitled to attorneys' fees and  
24 costs under 42 U.S.C. § 1983 *et seq.* and 42 U.S.C. § 1988(b).  
25

**SECOND CLAIM FOR RELIEF**

**Violation of the Due Process Clause of the Fourteenth**

**Amendment**

26. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

27. The Due Process Clause of the Fourteenth Amendment to the United States Constitutions stands as an additional constitutional hurdle to King County Code Sections 10.08.020 and 10.30.020. The Due Process Clause “provides heightened protection against government interference with certain fundamental rights and liberty interests,” including the “specific freedoms protected by the Bill of Rights” and “those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’” such as property rights. *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (quoting *Moore V. E. Cleveland*, 431 U.S. 494, 502 (1977)). Thus, while the “police power” of the government may be broad, it “must be exercised within a limited ambit and is subordinate to constitutional limitations.” *Panhandle E. Pipe Line Co. v. St. Highway Comm’n of Kansas*, 294 U.S. 613, 622 (1935).

28. Therefore, “a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause.” *Lingle v. Chevron USA*, 544 U.S. 528 (2005); *Rea v. Matteucci*, 121 F.3d 483, 485 (9th Cir. 1997) (under Due Process Clause a “federal interest remains

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1 in protecting the individual citizen from state action that is wholly arbitrary or  
2 irrational”).

3  
4 29. King County Code Section 10.30.020 violates Plaintiff’s substantive due  
5 process rights secured by the Fourteenth Amendment to the U.S. Constitution.  
6 Under the Due Process Clause of the Fourteenth Amendment, no State shall  
7 “deprive any person of life, liberty, or property, without due process of law.” The  
8 fundamental liberties protected by this Clause include most of the rights  
9 enumerated in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145, 147-149  
10 (1968).

11  
12 30. Plaintiff is the owner of the debris which it seeks to deposit. King County  
13 Code Sections 10.08.020 and 10.30.020 which expressly deprive Plaintiff of its  
14 rights and liberties in the transportation and disposition of its property in a  
15 manner which fails to advance any legitimate interest of King County to the  
16 extent it prohibits disposition of property outside of King County’s jurisdictional  
17 borders.  
18

19  
20 31. Plaintiffs were directly and proximately deprived of their property rights  
21 absent substantive due process of law, in violation of the Fourteenth  
22 Amendment to the United States Constitution.  
23

24 32. Plaintiffs have no adequate remedy at law and will suffer continued  
25 serious and irreparable harm to their constitutional rights unless the Defendant  
26 is enjoined from enforcing King County Code Sections 10.08.020 and 10.30.020.  
27



1 33. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
2 declaratory relief and injunctive relief invalidating and restraining enforcement  
3 of these sections of the King County Code.  
4

5 34. Plaintiffs find it necessary to engage the services of private counsel to  
6 vindicate its rights under the law. Plaintiffs are therefore entitled to an award of  
7 attorney's fees pursuant to 42 U.S.C. § 1988.  
8

9 **THIRD CLAIM FOR RELIEF**

10 **Violation of Article XI, Section 11 of the Washington Constitution**

11 35. Plaintiff incorporates herein by reference each and every allegation  
12 contained in the preceding paragraphs of this Complaint as though fully set  
13 forth herein.  
14

15 36. The Court has supplemental jurisdiction over this claim pursuant to 28  
16 U.S.C. § 1367.  
17

18 37. Plaintiff seeks declaratory relief under the Uniform Declaratory  
19 Judgments Act, RCW 7.24.010, on the basis that King County Code Section  
20 10.30.020 violates Article XI, Section 11 of the Washington Constitution.

21 38. Article XI, Section 11 of the Washington Constitution provides: "Any  
22 county, city, town or township may make and enforce within its limits all such  
23 local police, sanitary and other regulations as are not in conflict with general  
24 laws."  
25

26 39. An inherent limitation on the County's exercise of police powers is that  
27 the subject matter must be local and that the regulation must be reasonable and  
28

1 not conflict with general laws. *Lenci v. City of Seattle*, 388 P.2d 926 (1964). By  
2 prohibiting the deposit of waste outside the jurisdictional borders of King County  
3 renders its regulation not local and not reasonably calculated to protect the  
4 health, safety and welfare of people within King County's jurisdictional borders.  
5

6 40. King County Code Section 10.30.020 is not a local regulation because it  
7 applies to the deposit of material outside King County's territorial borders and  
8 King County has enforced that section to the deposit of material outside of its  
9 limits.  
10

11 41. King County Code Section 10.30.020 is also in conflict with general laws  
12 because RCW 70A.205.195 allows SkyCorp to deposit waste at any facility  
13 approved by the applicable jurisdictional health department, which is the health  
14 department where the facility is located. King County Code Section 10.30.030 is  
15 preempted because it prohibits what state law allows.  
16

17 42. Article XI, Section 11 also requires that any local regulations be  
18 reasonable. To the extent King County Code Section 10.30.020 prohibits  
19 SkyCorp from depositing any material outside of King County's territorial limits,  
20 that code section is not reasonable in that it has no relation to the health, safety,  
21 or welfare of inhabitants or property owners within King County.  
22

23 43. Plaintiff seeks a declaratory judgment of rights and obligations under the  
24 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil  
25 Rule 57 as to the allegations above. An actual dispute exists between Plaintiff  
26 and the County whose interests are genuinely opposing in nature. These  
27  
28

1 disputed interests are direct and substantial. A judicial determination can  
2 provide a final and conclusive resolution as to the parties' rights and  
3 responsibilities.  
4

5 **FOURTH CLAIM FOR RELIEF**

6 **Violation of the Privileges and Immunities Clause of Article I, Section 12 of**  
7 **the Washington constitution**  
8

9 44. Plaintiff incorporates herein by reference each and every allegation  
10 contained in the preceding paragraphs of this Complaint as though fully set  
11 forth herein.

12 45. The Court has supplemental jurisdiction over this claim pursuant to 28  
13 U.S.C. § 1367.  
14

15 46. The privileges and immunities clause of article I, section 12 of the  
16 Washington State Constitution, provides that “[n]o law shall be passed granting  
17 to any citizen, class of citizens, or corporation other than municipal, privileges or  
18 immunities which upon the same terms shall not equally belong to all citizens,  
19 or corporations.”  
20

21 47. The right to dispose of one's property, although subject to local  
22 regulations, is a fundamental right of citizenship as is the right to travel and do  
23 business with any lawfully operating business. King County Code Section  
24 10.30.020 denies SkyCorp the privilege of disposing of its property at any  
25 location of its choice which is allowed under all governing authorities with  
26 jurisdiction over the location. King County Code Section 10.30.020 denies  
27  
28

1 SkyCorp the right to choose to do business regarding its property with any  
2 lawful facility of its choice and only allows citizens who choose one of the  
3 County's approved locations to deposit their property at the location of their  
4 choice.  
5

6 48. There is no reasonable ground for denying SkyCorp that privilege of  
7 choosing a location outside of King County for the deposit of construction and  
8 demolition waste.  
9

10 49. The County's power to regulate waste has been manipulated to serve  
11 private interests at the expense of the common good and is unreasonable.  
12

13 50. Plaintiff seeks a declaratory judgment of rights and obligations under the  
14 Washington Uniform Declaratory Judgment Act, Chapter 7.24 RCW and Civil  
15 Rule 57 as to the allegations above. An actual dispute exists between Plaintiff  
16 and the County whose interests are genuinely opposing in nature. These  
17 disputed interests are direct and substantial. A judicial determination can  
18 provide a final and conclusive resolution as to the parties' rights and  
19 responsibilities.  
20

21 **REQUESTED RELIEF**

22 WHEREFORE, Plaintiffs request that this Court:  
23

24 1. Issue a declaratory judgment that the King County Code Section  
25 10.30.020 is:

26 a. unconstitutional under the dormant Commerce Clause of the United  
27 States Constitution;  
28

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Bellevue, WA 98004  
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1 b. unconstitutional under the Due Process Clause of the Fourteenth  
2 Amendment;

3 c. not authorized under King County's police power and is preempted by  
4 state law;

5 d. unconstitutional under the privileges and immunities clause of Article I,  
6 section 12 of the Washington constitution;

7 d. and violates Plaintiff's civil rights under 42 U.S.C. Section 1983, as alleged  
8 above and entitling Plaintiff to relief under that statute;

9 2. Award Plaintiff its costs and reasonable attorney's fees incurred in this  
10 action pursuant to 42 U.S.C. § 1988 and other applicable law; and

11 3. Grant all other such relief to Plaintiffs as the Court may deem proper and  
12 just.

13 Dated this 5<sup>th</sup> day of November, 2020

14  
15  
16  
17  
18  
19 /s/ Richard M. Stephens  
Richard M. Stephens, WSBA 21776

20 Stephens & Klinge LLP  
21 601 – 108<sup>th</sup> Avenue NE, Suite 1900  
22 Bellevue, WA 98004  
23 425-453-6206  
stephens@sklegal.pro